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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,
12 Plaintiff,

No. CR 12-00532 WHA

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v.
14 HERMILIO PALMERIN ZAMUDIO,
15 Defendant.

**MEMORANDUM OPINION
REGARDING ORDER
DENYING BATSON
CHALLENGE**

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18 In this criminal trial for reentry of a removed alien under 18 U.S.C. 1326, defense counsel
19 asserted a *Batson* challenge to the government's peremptory strike during jury selection on March
20 11, 2013. This memorandum opinion memorializes the oral ruling denying the defense's
21 challenge.

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The Equal Protection Clause forbids the striking of potential jurors solely on account of
their race. *Batson v. Kentucky*, 476 U.S. 79, 89 (1986). A violation of equal protection under
Batson is established in a three-step process: (1) the defense must make out a prima facie case
that the prosecutor exercised peremptory strikes on the basis of race "by showing that the totality
of the relevant facts gives rise to an inference of discriminatory purpose"; (2) if the prima facie
case is made, the burden shifts to the prosecutor to articulate a race-neutral explanation for
striking the jurors in question; and (3) if the prosecutor carries the burden of showing a

1 race-neutral explanation, the defense has the burden to prove purposeful discrimination. *Id.* at
2 93–94, 97–98.

3 During the Court’s review of the parties’ peremptory strikes to the jury panel, the defense
4 asserted a *Batson* challenge to the government’s strike of Mr. Salvador Araujo from the jury
5 panel. As its prima facie showing, defense counsel stated that Mr. Araujo was one of only a few
6 Hispanic jurors on the panel. According to the government, at least one other Hispanic was on
7 the panel (Mr. Patrick Gonzales); that juror was eventually selected for the jury and served as the
8 foreperson. The defense argued that Mr. Araujo’s answers to voir dire questions and the paucity
9 of Hispanic panel-members in this prosecution related to immigration established a prima facie
10 case for the *Batson* claim.

11 The government conceded that the defense’s prima facie showing was sufficient, but
12 contended that it had a non-discriminatory explanation for striking the juror. The government
13 stated that its reason for striking Mr. Araujo was due to a concern that, given his earlier
14 statements during voir dire, he seemed to have a distrust of police officers and law enforcement.
15 In response to a question from the Court regarding whether any potential juror had any
16 particularly good or particularly bad experiences with law enforcement, Mr. Araujo had stated
17 that, twenty years ago, a police officer pulled him over while he was driving. The officer said it
18 was for “no reason whatsoever,” then searched his car. Mr. Araujo stated that he felt he had been
19 racially profiled and was upset about the experience. Defense counsel argued that, when
20 questioned by the Court about the incident, Mr. Araujo responded that he would be able to decide
21 the case fairly on the merits despite this experience.

22 The Court overruled the defense’s objection and excused Mr. Araujo, stating that even
23 though Mr. Araujo said he could decide the case fairly, there was nonetheless a risk that his
24 personal experience of prior racial profiling would become a factor for him in evaluating the case.
25 The government had therefore provided a “clear and reasonably specific” explanation of its
26 legitimate, race-neutral reason for exercising the challenge. *Id.* at 98 fn 20. Although the
27 circumstances fell below a for-cause removal, a peremptory challenge may be exercised for lesser
28 cause so long as it is not discriminatory.

United States District Court

For the Northern District of California

1 For the foregoing reasons, and as stated previously on the record, defendant's *Batson*
2 motion is **DENIED**.

3 **IT IS SO ORDERED.**

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5 Dated: March 13, 2013.

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Wm. Alsup
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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